

CHAPTER 29-A

DOD FAMILY SUPPORT PROGRAMS

Outline of Instruction

I. INTRODUCTION.

II. DOD POLICY.

III. AIR FORCE IMPLEMENTATION OF DOD POLICY.

- A. Reference: AFI 36-2906 (1 OCT 95); 32 C.F.R. Part 818.
- B. "The Air Force expects its members to provide regular and adequate support, either direct or in kind, based on the needs of the dependents and the ability of the member to provide."
- C. No authority to order a specific dollar amount of support.
- D. BAQ at the with-dependents rate will be terminated if the member refuses to use the money to support family members.
- E. Paternity: the issue must be resolved in civil court.

IV. MARINE CORPS IMPLEMENTATION OF DOD POLICY.

- A. New Reference: Chapter 8, Legal Admin Manual.
- B. Effective Date: **1 April 1998.**
- C. Guidelines--§8002

1. GENERAL RULE: The greater of \$200.00 per supported family member, or BAH, up to 1/3 of gross pay.
2. **GROSS PAY** is defined as basic pay, basic allowance for housing.
3. Rules for Single Family Units.
 - a. SINGLE FAMILY IN GOVERNMENT HOUSING: Support will be \$200.00 per supported person up to 1/3 of gross pay.
 - b. SINGLE FAMILY NOT IN GOVERNMENT HOUSING: Support will comply with the general rule.
4. Rules for Multiple Family Units.
 - a. Do not include a spouse if the spouse is a member any U.S. Armed Force.
 - b. Support will comply with the general rule.
5. Military Couples.
 - a. NO CHILDREN OF THE MARRIAGE: There is no support obligation regardless of disparity in pay-grade.
 - b. ALL CHILDREN OF THE MARRIAGE IN CUSTODY OF ONE SPOUSE: General rule applies.
 - c. SPLIT CUSTODY: General rule applies.

D. Punitive Regulation.

1. Para. 8001 makes a violation of the guidelines a violation of Article 92, UCMJ.

2. Duration of support: Support amounts paid under the interim support requirements apply until a court order or written agreement is obtained.

E. In-kind Payments.

1. In-kind payment is authorized.
2. Not limited to non-governmental housing costs. Could also be for charge accounts, or car payments, etc.
3. Commander must authorize the in-kind payment as complying with the regulation requirements.

F. Release from Obligation.

1. Commander can release a Marine from the interim support obligations established by the regulation.
2. §8003.5 specifies 4 reasons for release.
 - a. Marine cannot determine the whereabouts and welfare of the child concerned.
 - b. Person requesting support for the child does not have physical custody of the child.
 - c. Marine is the victim of a substantiated case of physical abuse by the spouse requesting support.
 - d. The dependent is in jail.
3. §8004.4 establishes one reason for release.
 - a. Spousal Misconduct. A Marine can allege marital desertion or adultery by the spouse as a means of release from the spousal portion of support.

- b. The request for release goes to the Marine's Commanding Officer who forwards it to the General Court Marital authority for approval of the waiver.

G. Paternity.

- 1. Civil Matter. Marine commanders do not make paternity determinations in the absence of an acknowledgment by the Marine or a court order of paternity.
- 2. If a Marine acknowledges paternity or a court adjudicates him the father of an illegitimate child, the Marine owes an obligation of support under the regulation.

V. NAVY IMPLEMENTATION OF DOD POLICY.

A. Reference: 32 C.F.R. Part 733.

B. Support amounts in the absence of an agreement or a court order:

- 1. Spouse only: 1/3 of gross pay.
- 2. Spouse and one child: 1/2 of gross pay.
- 3. Spouse and two or more children: 3/5 of gross pay.
- 4. One child (no spousal support): 1/6 of gross pay.
- 5. Two children (no spousal support): 1/4 of gross pay.
- 6. Three or more children (no spousal support): 1/3 of gross pay.

C. "Gross pay" means basic pay, BAQ and VHA but not BAS or other pay entitlements.

- D. These are only guidelines, and a commander can require a member to pay can be more or less, based on all the facts of the case.
- E. The spousal support obligation (not the child support obligation) may be waived by the Director, DFAS - Cleveland based on the spouse's desertion without cause, physical abuse or infidelity. The commander has discretion to withhold administrative or disciplinary action when the whereabouts and welfare of the child cannot be determined or where the person seeking payment does not have physical custody of the child.
- F. Paternity.
 - 1. In disputed cases, the issue must be resolved by a civil court.
 - 2. Support must be paid in accordance with any applicable court order, or agreement between the parties, or the above guidelines.

VI. COAST GUARD IMPLEMENTATION OF DOD POLICY.

- A. Reference: Personnel Manual, Chapter 8, -- Support of Dependents.
- B. Members are expected to "provide continuous and adequate for lawful dependents."
 - 1. If, after counseling, the member demonstrates a pattern of non-support and/or failure to obey civil court support orders, the member is subject to administrative discharge for unfitness.
 - 2. Non-support that is "notorious" and discrediting to the coast Guard can be the subject of court martial or other disciplinary proceedings.
- C. Court orders for support are normally binding on members. If, however, a "member acting on good faith and on the express advice of qualified legal counsel disputes such a claim, the commanding officer may withhold disciplinary /administrative action against the member for a reasonable length of time" (emphasis in original).

D. Where there is no court order or agreed to level of support, the following scale is used:

1. Spouse only -- BAQ and VHA, plus 20% of basic pay.
2. Spouse and 1 minor child -- BAQ and VHA, plus 25% of basic pay.
3. Spouse and 2 or more minor children -- BAQ and VHA, plus 30% of basic pay.
4. One minor child -- 1/6 of basic pay.
5. Two minor children -- 1/4 of basic pay.
6. Three or more minor children -- 1/3 of basic pay.

E. Defenses to non-support (in accordance with Coast Guard guidelines):

1. Spousal non-support -- infidelity or desertion.
2. Child non-support --
 - a. Inability of the member to ascertain the whereabouts and welfare of the child.
 - b. Where the person seeking payment does not have physical custody of the child.

F. Paternity -- a civil matter.

- If there is no court ordered amount of support and no agreement with mother of the child then the guidelines apply.

VII. ARMY SUPPORT REQUIREMENTS.

A. AR 608-99 (1 NOV 94). Six Key Points.

1. The support requirement imposed by the Army regulation applies only to "family members."
2. The regulation itself defines "family members" and this definition may differ from other definitions of "dependents" or "family members" used for other benefits such as identification cards and BAQ entitlement.
3. The regulation creates an "interim support requirement" that applies **ONLY** when there is no agreement between the parties or no court order. [This interim amount is not intended to necessarily provide adequate support and it should not be used as a guideline for civilian agencies or courts in establishing support requirements.]
4. The regulation creates no authority for the Army to take money from a soldier and pay it to family members. It does, however, create a military obligation to pay support, and the Army can punish a soldier for failing to comply. And, of course, the Army (as well as other branches of service) will comply with valid civilian garnishment or wage assignment orders.
5. Enforcement authority is the military commander.
6. Basic Allowance for Quarters (BAQ) is used by the Army as a **yard-stick** (it is not a cap on payments) for determining the interim support obligation; actual receipt of BAQ is **not** a prerequisite to the requirement to pay support to family members.

B. The Support Obligation--Who is Covered? -- **Family Members!**

1. Current spouse,
2. Minor children (under 18) of the current marriage and of past marriages (including children adopted by the soldier).

3. Minor children born out of wedlock to--
 - a. a woman soldier.
 - b. a male soldier IF paternity is established by court order and a support obligation is judicially established.
4. Any other person the soldier is obligated to support by applicable state law.
 - a. Stepchildren: no, unless required by state law to support.
 - b. Parents: same as for stepchildren.

C. The Support Obligation--How Much?

1. Soldiers must comply with provisions of any support order.
2. Absent a support order, soldiers must pay in accordance with any written support agreement entered into.
3. If no written agreement, should pay in accordance with any oral agreement regarding support.
4. If there is no support order nor a written or oral agreement, or if there is any dispute regarding an oral agreement, then as a minimum the soldier must pay in accordance with the Army's interim support requirement.

D. Foreign Court Orders. AR 608-99, para. 2-4 b.

1. Soldier cannot be ordered to comply with a court order of support issued by a foreign court **UNLESS**:
 - a. the foreign court order is domesticated by a U.S. state court, OR

- b. a treaty or international agreement exists between the U.S. and the foreign country to honor court orders. The U.S. has such an agreement with Germany ONLY WHILE THE SOLDIER IS STATIONED IN GERMANY.
 - 2. Soldiers should know that this lack of authority to require them to comply does not relieve them of the foreign court obligation if they ever come under the jurisdiction of the foreign court or the foreign court order is later domesticated in the U.S.
 - 3. Soldiers must still comply with the interim support requirements of AR 608-99 even if the foreign court order cannot be enforced.
- E. The Interim Support Requirement. AR 608-99, para. 2-6.
- 1. Purpose: to insure some family support while the parties are seeking to reach an agreement or initiating litigation.
 - a. BAQ-WITH - The full basic allowance for quarters with dependent rate for the service member's pay grade.
 - b. BAQ-DIFF - The difference between basic allowance for quarters with dependents and the basic allowance for quarters without dependents for the service member's pay grade.
 - c. Pro-rata Share - Basic allowance for quarters with dependents rate for the service member's pay grade divided by the total number of family members.
 - 2. EFFECT OF NEW BASIC ALLOWANCE FOR HOUSING (BAH).
 - a. Effective 1 January 1998, all service members receive BAH instead of BAQ at the with or without rate and VHA. BAH is a combined figure of the old BAQ rate and VHA rate for the service members locale.
 - b. AR 608-99 still applies. Use DFAS BAH Table II and Differential for the equivalent BAQ-WITH rates and BAQ-DIFF rates for a particular rank. A copy of the 1999 BAH Table II is attached.

3. Single Family Situations.
 - a. Family **living in government quarters**--BAQ-DIFF.
 - b. Family **living off-post**--full BAQ-WITH
 - c. Family members residing in **different locations**--pro-rata share to those not in government quarters and BAQ-DIFF for members residing in government quarters.
4. Military Couple Situations.
 - a. If there are no children, neither spouse has any obligation to provide support for the other.
 - b. If there are children and all are in the custody of one of the spouses, the noncustodial spouse pays support equal to BAQ-DIFF.
 - c. If there is a split of custody regarding two or more children, neither spouse pays any support to the other.
5. Multiple Family Situations.
 - a. "Multiple family situations"--family members from different relationships (possibly living at varying locations).
 - b. Generally, each supported family member gets a pro-rata share of BAQ-WITH.
 - (1) REMEMBER THAT ALL SUPPORT ORDERS MUST BE COMPLIED WITH.
 - (2) REMEMBER THAT WHERE FAMILY MEMBERS LIVE ALSO PLAYS INTO WHAT AMOUNT OF SUPPORT THEY RECEIVE.

c. Examples:

- (1) Soldier has two children by a previous marriage with no court order for support, and a current family of a wife and one child. Total family members: 4, so each gets 25% of an amount equal to the soldier's BAQ at the with-dependent rate. If the BAQ rate is \$300, the current family gets \$150 ($25\% \times 2 \text{ people} \times \300).
- (2) Same as above except the two children live with their mother and stepfather, who is also in the Army, in government quarters. Their support is the difference between BAQ "with" and "without." The current spouse and child together still get 50% of the BAQ "with" rate.
- (3) Same as above except there is a court order requiring payment of \$150 per month per child for each of the two children of the previous marriage. The "interim standards" are not applicable to them, and the regulation commands that the soldier pay in accordance with the order. The current spouse and child still receive their pro rata share of the BAQ "with" amount.

6. When the Interim Requirement Is Not Acceptable.

- a. Soldiers and supported family members who believe the interim requirement is not enough or excessive must obtain a court order or enter an agreement to change the support obligation of the soldier.
- b. Commander has **NO** authority to order support less than or in excess of the interim requirement amount found in AR 608-99.

F. Payment of Support. AR 608-99, para. 2-7.

1. Cash

- a. Personally delivered to an adult

b. Receipt

2. Check

3. Money Order

4. Voluntary Allotment

5. All payments are due first day of the month following the month to which the support payment pertains.

G. Payment In Kind. AR 608-99, para. 2-7d & e.

1. Allowed only in cases of interim support unless the court order or written agreement allows for payment in kind.

2. Limited to payment of non-government housing expenses for a dwelling in which the supported family members reside.

a. Rent.

b. Real property taxes and property insurance, mortgages

c. DOES NOT include utilities, cable T.V.

3. Soldier must make up any shortfall between payment in kind and actual support obligation.

4. Other support in kind such as car payments, insurance and credit card obligations requires written consent of the supported family members.

H. Release From Support Requirements. AR 608-99, para. 2-11.

1. Battalion commanders **ONLY** have the authority to release a soldier from support obligations. Battalion commander **MUST** consult with the SJA before releasing the soldier. (AR 608-99, para. 2-10b (2)c)

2. Order has been issued by a court without jurisdiction. Release from the requirement to support in accordance with the terms of a court order is only appropriate when jurisdiction is clearly lacking and the soldier has continuously provided support in accordance with a written agreement or the interim requirements of AR 608-99.
3. A court order does not contain a financial support provision. There is a judicial proceeding underway and at least one court order issued but there is NO language of support addressed in the order(s). Release under this authority is limited and should be discussed with the servicing SJA office.
4. The income of the spouse exceeds the military pay of the soldier. Release from **spousal support**, not child support, and only applies in the absence of a court order or written separation agreement. The soldier must show the spouse makes more than the soldier's military pay (defined as military base pay only).
5. The soldier has been the victim of a substantiated case of physical abuse. The abuse must be documented by a court or a Family Advocacy Case Management Team (FACMT) and not involve a mutual affray or abuse of the spouse by the soldier. This exception authorizes release from regulatory requirements of **spousal support**, not child support.
6. The supported family member is in jail. This exception applies to any penal institution, regardless of the reason for incarceration.
7. The supported child is in the custody of another who is not the lawful custodian. This limited exception applies only when the soldier is the lawful custodian and is diligently pursuing physical custody.

I. Raising the Issue of Non-Support.

1. Communicating with the nonsupporting soldier is the initial option. If it is obvious that the nonpayment of support is intentional, or if there is no satisfactory response from the soldier, write to the soldier's immediate (i.e., unit) commander.
2. The commander is required to counsel the soldier, ascertain his/her intentions re: support, and respond to the writer. The commander may also impose sanctions for non-support.

J. Sanctions for Non-Compliance.

1. AR 608-99 is punitive regarding paragraphs 2-6 and 2-9.
2. Administrative:
 - a. Reprimand,
 - b. Adverse information in official file,
 - c. Bar to Reenlistment,
 - d. Administrative Elimination.
3. Punitive:
 - a. Article 15
 - b. Courts-Martial.
4. The decision to impose sanctions is entirely within the commander's discretion.

- K. BAQ Entitlement. DOD Financial Management Regulation. Generally, allowances received by soldier based on the existence of dependents must be paid for their support. Failure to pay such amounts in support can lead to recoupment and charges based on fraud.

VIII. CONCLUSION.

1999 BAH Table II and Differential

GRADE	FULL (BAQ/WITH)	DIFFERENTIAL
0-7 To 0-10	\$1081.20	\$202.80
06	\$973.50	\$167.70
05	\$938.40	\$162.30
04	\$827.10	\$108.00
03	\$684.30	\$107.70
02	\$584.40	\$127.20
01	\$522.60	\$137.40
03E	\$735.30	\$112.80
02E	\$663.60	\$134.70
01E	\$613.20	\$158.10
W5	\$798.30	\$67.50
W4	\$732.00	\$83.10
W3	\$670.80	\$125.40
W2	\$616.80	\$132.60
W1	\$533.70	\$128.10
E9	\$702.60	\$169.50
E8	\$647.70	\$158.40
E7	\$601.50	\$183.60
E6	\$555.60	\$177.30
E5	\$499.80	\$150.90
E4	\$434.40	\$130.80
E3	\$404.40	\$106.80
E2	\$385.20	\$143.40
E1	\$385.20	\$169.50

